

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 12,776

)

Appeal of)

)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying her request for a waiver of cooperation with the collection of child support. The issue is whether the petitioner meets the criteria for such a waiver as set forth in the pertinent regulations.

FINDINGS OF FACT

The facts are not in dispute. The petitioner receives ANFC on behalf of her granddaughter. The child's mother (the petitioner's daughter) and father each live in a different state. According to the petitioner, the couple's divorce decree gave custody to the mother. Although the child now resides with her, the petitioner does not feel the Department should pursue support from the child's mother, who (again according to the petitioner) is not as well off financially as the child's father. The petitioner does not allege, however, that any physical or emotional harm would come to her, the child, or either parent if the Department initiated support collection against either or both parents.

At the hearing, held on May 9, 1994, the Department explained to the petitioner that it would seek support from both the father and mother of the child; and that as a matter of law both parents would have individual and respective legal recourse to dispute either the initiation of support collection against them or the amount of support they would have to pay.

ORDER

The Department's decision is affirmed.

REASONS

The regulations require that as a "condition of inclusion in the ANFC grant"⁽¹⁾ the recipient caretaker relative must agree to cooperate with the Department in "in all practical and feasible means of securing

support from any absent parent, unless good cause for refusal" is shown and a "waiver" is granted. W.A.M. §§ 2331.32-34. "Good Cause" is defined by W.A.M. § 2331.33 as follows:

To show that cooperation may be "against the best interests of the child" the applicant or recipient must produce some evidence that cooperation in establishing paternity or securing support is reasonably anticipated to result in any one of the following:

1. Serious Physical or emotional harm to the child for whom support is being sought.
2. Physical or emotional harm to the mother or caretaker relative which is so serious it reduces her ability to care for the child adequately.

NOTE: Physical or emotional harm must be of a serious nature in order to justify finding of good cause.

3. At least one of the following circumstances exists, and the Commissioner agrees that because of the existence of that circumstance in the particular case, requiring the parent to cooperate in proceedings to establish paternity or secure support would be detrimental to the child for whom support would be sought:

- a. The child for whom support is sought was conceived as a result of incest or forcible rape;
- b. Legal proceedings for the adoption of the child are pending before a court of competent jurisdiction, or
- c. The applicant or recipient is currently being assisted by a public or licensed private social agency to resolve the issue of whether to keep the child or relinquish him for adoption, and the discussions have not gone on for more than three months.

The applicant must be notified of the right to request a waiver based on "good cause" as an exception to the cooperation requirement.

The petitioner in this matter concedes that her situation meets none of the above conditions. Therefore, the board is bound by law to affirm the Department's decision. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 19.

#

1. It is not clear whether the petitioner, herself, is included in her granddaughter's ANFC grant. If she is not, even though she does not qualify for a "waiver" of the requirement to cooperate with the Department in the collection of support, it appears that if she continued to refuse to cooperate, as a practical matter there is no penalty against either her or her granddaughter that the Department could impose.